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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/688,806	10/17/2003	John Caden	1.260.03	9685
4219	7590	09/13/2007		
MALLOY & MALLOY 2800 S.W. THIRD AVENUE HISTORIC CORAL WAY MIAMI, FL 33129			EXAMINER RICHMAN, GLENN E	
			ART UNIT 3764	PAPER NUMBER
			MAIL DATE 09/13/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/688,806	<b>Applicant(s)</b> CADEN ET AL.	
	<b>Examiner</b> Glenn Richman	<b>Art Unit</b> 3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 June 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935.C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) 1-18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 19,20 and 23-32 is/are rejected.
- 7) ☒ Claim(s) 21 and 22 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 19, 21-29, 31,32 are rejected under 35 U.S.C. 102(b) as being anticipated by Cox.

Cox discloses a frame including a base disposed on a supporting surface (80), and a track assembly connecting to said base (24), said track assembly including an open end (fig. 2, between 14's) and a substantially closed end (fig. 2, between 12) and two track segments collectively convergent from said open end to said closed end (24, 24, fig. 2), two hand grips linearly and reciprocally movable along different ones of said track segments (28, treated as hand grips) a resistance assembly including a line extending along a predetermined path of travel in interconnecting relation to said hand grips, said resistance assembly including a resistance mechanism engaging said line and structured to exert a movement restrictive force thereon (70), and said open end disposed and sufficiently dimensioned to at least partially receive the user therein when the user is in a seated, substantially upright orientation (fig. 1).

As for claims 21-29,31,32, Cox further discloses said track segments are disposed in a predetermined angular inclination relative to the supporting surface (fig. 2), said track segments are substantially coplanar with one another (fig. 2), a carriage

assembly including at least two carriages each supporting a different one of said hand grips (fig. 1), said line is interconnected and movable with said carriages along said path of travel (col. 3, lines 33-46), said two track segments each have a linear, at least partially hollow configuration (fig. 3), said two carriages are movably connected both externally and internally to corresponding ones of said track segments (fig. 3), each of said carriage assemblies includes a roller assembly rotationally engaging interior portions of corresponding ones of said track segments (fig. 3), each of said track segments comprise a rail assembly disposed within and extending along a length thereof (fig.2), said rail assembly and said roller assembly cooperatively structured to movably secure each of said carriages to corresponding ones of said track segments (fig.3), said track assembly is disposed at a predetermined angular inclination relative to the supporting surface (fig.2), said line is adjustable along its length and cooperatively disposed and structured with said handgrips to vary the relative positions of said handgrips upon adjustment of said line (fig. 2).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 29 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cox in view of Schmidt.

Cox does not disclose said carriages include a shell disposed externally of and in at least partially surrounding relation to corresponding ones of said track segments (fig. 9).

Schmidt discloses said carriages include a shell disposed externally of and in at least partially surrounding relation to corresponding ones of said track segments (fig. 9).

It would have been obvious to use Schmidt's carriage with Cox's device, as it is well known as taught by Schmidt to use a carriage that surrounds a track segment, for maintaining the carriage on the track.

Schmidt further discloses said track assembly is height adjustable relative to the supporting surface (col. 14, lines 46-52).

### ***Response to Arguments***

Applicant's arguments filed 6/14/07 have been fully considered but they are not persuasive.

1. Applicant disagrees with the interpretation of the foot platforms being the equivalent of hand grips for the purpose of anticipating Applicant's claimed structure.

Though designed for feet, nothing prevents Cox's foot platforms from being gripped by the hand, and to the extent claimed used as hand grips.

2. In addition the Examiner contends that Cox discloses an open ended track structure being disposed and sufficiently dimensioned to at least partially receive a user therein when the user is in a seated, substantially upright orientation. As clearly

represented in Figure 1 of Cox, as well as columns 1-5 of the Cox specification, the entire structure or apparatus of Cox is positioned close to its supporting surface thereby safely enabling a user to stand on and move with the foot platforms 28. In contrast, Applicant invention now calls for the open end of the track assembly and more specifically the corresponding proximal ends of the track segments to be disposed and structured to facilitate the positioning of a user therebetween when seated in an upright orientation on the supporting surface. A further review of the Cox reference clearly indicates that it would be literally impossible for the user to be seated in an upright orientation while at the same time being disposed between the open, proximal ends, as at 14, of the track segments. Clearly, Cox teaches away from a seated orientation of the user by the required placement of the user's shoe or foot on respective ones of the foot platforms 28.

As to 2 above, since there applicant does not claim any feature to sit on, "user is in a seated, substantially upright orientation" is not given any patentable weight.

3. Applicant also emphasizes that claim 19 of this application call for the track assembly to include a closed end and an open end. In contrast, Cox teaches away from a closed end by clearly representing the ends 12 of the Cox track segments being disposed in spaced relation to one another as clearly represented in Figure 2. Therefore ends 12 of the Cox track segments define an open end as does the opposite end portions 14.

As to 3 above, it is clear that looking at Cox fig. 2, the open end is from 14 to 14, while converging to the closed end 12.

4. The carriages disposed in supporting relation to respective hand grips, wherein each of the carriages include a shell disposed externally of and in at least partially surrounding relation to corresponding ones of the track segments.

As to 4 above, new grounds see Schmidt above.

***Allowable Subject Matter***

Claims 21 and 22 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Glenn Richman whose telephone number is 571-272-4981. The examiner can normally be reached on Mon-Thurs.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Huson can be reached on 571-272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Glenn Richman  
Primary Examiner  
Art Unit 3764